

**REMARKS**

The applicant respectfully requests reconsideration in view of the amendment and the following remarks. The applicant has amended claims 8 and 9 as suggested by the Examiner.

Claims 8 and 9 are rejected under 35 U.S.C. 112, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1, 4, 5-9, and 12 are rejected under 35 U.S.C. 102(e) as being anticipated by Kamatani et al., US 2003/0059646 A1 ("Kamatani"). Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kamatani. Claims 1, 4-6, 8, 10, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Igarashi et al., US 2001/0019782 A1 ("Igarashi"). Claims 1, 4, 5-9, 12, and 15 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2, 5, 6, 8, 10, 12 and 22 of U.S. Patent No. 7,094,897 B2 ("797 patent"). The applicant respectfully traverses these rejections.

**Rejections Under 36 USC § 112**

Claims 8 and 9 are rejected under 35 U.S.C. 112, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The applicant has amended claims 8 and 9 as suggested by the Examiner. For the above reasons, this rejection should be withdrawn.

**Rejections Under 35 USC § 102**

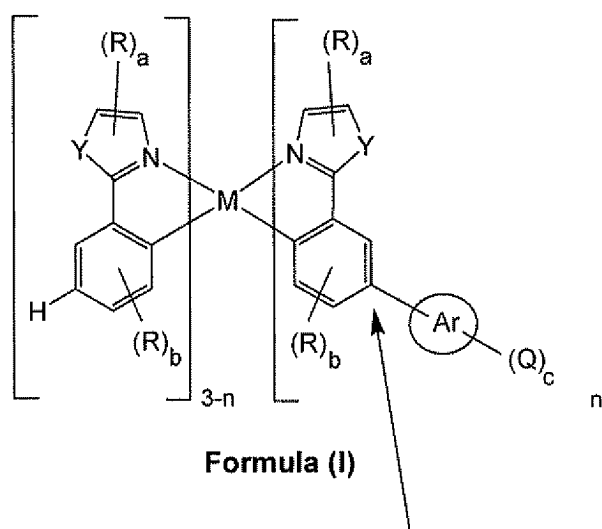
Claims 1, 4, 5-9, and 12 are rejected under 35 U.S.C. 102(e) as being anticipated by Kamatani. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kamatani. Enclosed is a 1.131 Declaration which establishes a reduction to practice (experiments to synthesize compound according to claim 1 have been performed) prior to November 30, 2001. It

is noted that the examples in the declaration did not measure the purity (see claim 15). However, as the Examiner has stated on page 6 of the Office Action, Kamatani does not disclose the purity of the compounds. The applicant believes that the 1.131 declaration antedates Kamatani. For the above reasons, this rejection should be withdrawn.

### **Rejections Under 35 U.S.C. § 103**

Claims 1, 4-6, 8, 10, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Igarashi. Igarashi disclose iridium complexes with three phenylpyridine ligands wherein the phenyl groups of the ligand are further substituted with phenyl groups meta to the position of the coordination to the iridium, i.e. in positions 4 and 6 (compounds 1-42 and 1-46). Igarashi discloses further that any substituent may be bound in any position of the phenylpyridine ligand. Igarashi does not disclose how to synthesize these compounds.

The metal complexes as claimed in pending claim 1 differ from the metal complexes disclosed by Igarashi in that the aryl substituent is bound para to the position of the coordination to the metal, i.e. in position 5 (see applicant's formula (1) Scheme 1).

**Scheme 1**

This has the effect that metal complexes with a very good solubility in organic solvents are accessible, which are good triplet emitters when used in an OLED (see page 3, lines 1-5 of the specification). Furthermore, the inventive complexes having the substituent para to the position of the coordination to the metal are synthetically better accessible than isomers having the aryl substituent in any other positions. Igarashi does not disclose the synthesis of compounds 1-42 or 1-45. However, in all syntheses disclosed by Igarashi the final ligand is coordinated to the metal (see e.g. scheme on page 17). The applicant has informed the undersigned that it is technically more difficult to first synthesize a ligand, which is substituted by an aryl group, and then use this ligand in the synthesis of a metal complex.

A problem underlying the present invention was to find metal complexes with good emissive properties, which show a good solubility in organic solvents and which in the same time can be synthesized easily and in high yield. This problem is solved by the complexes according to claim 1 of the present invention.

Igarashi would not lead the person of ordinary skill in the art to the present invention as Igarashi does not disclose any suitable synthesis for the metal complexes having phenyl substituents on the ligand and as the only synthesis path disclosed by Igarashi used the pre-formed ligand. The person of ordinary skill in the art would therefore not conclude that metal complexes being substituted with an aryl or heteroaryl group in the position para to the metal would have good emissive properties and high solubility and in the same time are synthetically much more easily accessible than the metal complexes disclosed by Igarashi. For the above reasons, this rejection should be withdrawn.

### **Double Patenting**

Claims 1, 4, 5-9, 12, and 15 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2, 5, 6, 8, 10, 12 and 22 of U.S. Patent No. 7,094,897 B2 ("797 patent").

In response, Applicants have filed herewith a Terminal Disclaimer. Accordingly, Applicants respectfully request that the double-patenting rejection be withdrawn.

The filing of a Terminal Disclaimer to obviate a rejection based on nonstatutory double patenting is not an admission of the propriety of the rejection. The "filing of a Terminal Disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection." Quad Environmental Technologies Corp. v. Union Sanitary District, 946 F.2d 870, 20 U.S.P.Q.2d 1392 (Fed. Cir. 1991). Accordingly, Applicants filing of the attached disclaimer is provided for facilitating a timely resolution to prosecution only, and should not be interpreted as an admission as to the merits of the obviated rejection.

A one month extension has been paid. Applicant believes no additional fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 03-2775, under Order No. 14113-00044-US from which the undersigned is authorized to draw.

Dated: March 20, 2009

Respectfully submitted,

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Enclosure: 1.131 Declaration  
Terminal Disclaimer